

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P O Box 146741
Salt Lake City UT 84114-6741
Telephone: (801) 530-6628

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSES OF	:	
DENNIS J. BLUME	:	NOTICE OF AGENCY ACTION
TO PRACTICE AS A DENTIST AND TO	:	
ADMINISTER AND PRESCRIBE	:	
CONTROLLED SUBSTANCES	:	
IN THE STATE OF UTAH	:	Case No. DOPL-2016-78

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Dennis J. Blume ("Respondent"), 10 South 300 East Provo UT 84606:

The Division of Occupational and Professional Licensing ("the Division") hereby files this notice of agency action. Said action is based on the Division's verified petition, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. It is maintained under the jurisdiction and authority of the Division as set forth in §58-1-401(2). **Within thirty (30) days of the mailing date of this notice, you are required to file a written response with this Division.** The response you file may be helpful to clarify, refine or narrow the facts and violations alleged in the verified petition.

Your written response, and any future pleadings or filings, which are a part of the official file in this proceeding, should be mailed or hand delivered to the following:

Signed originals to:
Division of Occupational
and Professional Licensing
Attn: Disciplinary Files
(by mail): PO Box 146741
Salt Lake City UT 84114-6741
(by hand delivery):
160 East 300 South, 4th floor

A copy to:
L. Mitchell Jones
Assistant Attorney General
Heber M. Wells Building
(by mail): PO Box 140872
Salt Lake City UT 84114-0872
(by hand delivery):
160 East 300 South, 5th floor

Salt Lake City, Utah

Salt Lake City, Utah

You may represent yourself or, at your own expense, be represented by legal counsel at all times while this action is pending. **Your legal counsel shall file an entry of appearance with the Division after being retained to represent you in this proceeding.** Until that entry of appearance is filed, the Division, its counsel, and the presiding officer will communicate directly with you.

The presiding officer for the purpose of conducting this proceeding will be Gregory Soderberg, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney may have questions as to the procedures relative to the case, Judge Soderberg can be contacted in writing at P O Box 146701, Salt Lake City, UT 84114-6701; by telephone at (801) 530-6706; or by electronic mail at gsoderberg@utah.gov.

Pursuant to a determination previously made by the Division which generally governs proceedings of this nature, the Division is providing the relevant and nonprivileged contents of its investigative file to you, concurrent with the issuance of this notice.

The Division is also providing its witness and exhibit list to you, concurrent with the issuance of this notice. The witness list identifies each individual the Division expects to present as a witness and includes a brief summary of their testimony at the hearing. The exhibit list identifies each anticipated document which the Division expects to present at the hearing. The Division is also providing a copy of any document to you that has not been otherwise made available to you through the investigative file.

Concurrent with your filing of a written response, you should provide to the Division a copy of any documents you have which relate to this case. Further, you should provide your witness and exhibit list to the Division. The witness list should identify each individual you expect to present as a witness and include a brief summary of their anticipated testimony. The exhibit list should identify each document you expect to present at the hearing.

If you fail to file a response within the 30 days allowed or fail to attend or participate in any scheduled hearing, Judge

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Soderberg may enter a default against you without any further notice to you.

After the issuance of a default order, Judge Soderberg will cancel any prehearing conference or hearing scheduled in the Division's verified petition, conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and determine all issues in the proceeding.

If you are held in default, the maximum administrative sanction consistent with the verified petition may be imposed against you. That sanction in this case is revocation of license.

Counsel for the Division in this proceeding is L. Mitchell Jones, Assistant Attorney General, State of Utah. Mr. Jones may be contacted in writing at P.O. Box 140872, Salt Lake City, UT 84114-0872 or by telephone at (801) 366-0310. You may, subject to the deadlines established herein, attempt to negotiate a settlement of this proceeding by contacting counsel for the Division.

Any stipulation in lieu of a response should be jointly signed by yourself and the Division and filed within the time that a response would otherwise be due. Alternatively, any stipulation to resolve this case in lieu of the hearing shall be jointly signed by the parties and filed no later than one (1) week prior to the scheduled hearing.

Unless this case is resolved by a stipulation between the parties in lieu of the filing of a response, a prehearing conference will be conducted as follows:

March 25, 2016 at 9:00 a.m. by teleconference

During the conference, Judge Soderberg will address and resolve any further discovery issues. A schedule for the filing of any prehearing motions shall also be established.

Subject to the Department of Commerce Administrative Procedures Act Rules which govern this proceeding, this formal adjudicative proceeding must be completed within 180 calendar days from the date of issuance of this notice of agency action.

You are entitled by law to an evidentiary hearing to determine whether your licenses to practice as a dentist and to administer and prescribe controlled substances in the State of Utah should be revoked, suspended or subjected to other disciplinary action. Unless otherwise specified by the Director

of the Division, the Dentist and Dental Hygienist Licensing Board will serve as fact finder in the hearing. **The hearing will be conducted as follows:**

July 28 and 29, 2016 at 9:00 a.m. Conference Room TBD
4th floor
160 East 300 South
Salt Lake City, Utah

During the evidentiary hearing, you will have the opportunity to present an opening statement, submit evidence, conduct cross-examination, submit rebuttal evidence and offer a closing statement to the fact finder. After the close of the hearing, the Board will take the matter under advisement and then submit its Findings of Fact, Conclusions of Law and a Recommended Order to the Division for its review and action.

Dated this 16 day of February, 2016.

W. Ray Walker

W. Ray Walker
Regulatory & Compliance
Officer



L. MITCHELL JONES (USB 5979)
Assistant Attorney General
SEAN D. REYES (USB 7969)
Utah Attorney General
Commercial Enforcement Division
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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
STATE OF UTAH

IN THE MATTER OF THE LICENSES	:	
OF DENNIS J. BLUME	:	VERIFIED PETITION
UTAH LICENSE #341960-9922 & 8903	:	
TO PRACTICE AS A DENTIST AND TO	:	
ADMINISTER AND PRESCRIBE	:	Case No. DOPL 2016- 78
CONTROLLED SUBSTANCES	:	
IN THE STATE OF UTAH	:	

PRELIMINARY STATEMENT

These allegations were investigated by the Utah Division of Occupational and Professional Licensing (“Division”) upon complaints that **DENNIS J. BLUME** (“Respondent”), a licensee of the Division, has engaged in acts and practices that constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann. §§ 58-1-101 through 58-1-504, the Utah Dental and Dental Hygienist

Practice Act, Utah Code Ann. §§ 58-69-101 through 58-69-806, and the Code of Ethics of the American Dental Association. These allegations are based upon information provided by witnesses and by a Division investigator and are based upon information and belief the investigator obtained during his investigation. Each paragraph in this Verified Petition incorporates every other paragraph contained herein.

PARTIES

1. The Division is a division of the Department of Commerce of the State of Utah as established by Utah Code Ann. § 13-1-2.

2. Respondent was first licensed to practice as a dentist in the State of Utah pursuant to the Dentist and Dental Hygienist Practice Act, Utah Code Ann. §§ 58-69-101 through 58-60-806, on or about June 10, 1997. Respondent possesses a Class II anesthesia permit. Respondent's was first licensed to administer and prescribe controlled substances in the State of Utah on or about June 10, 1997, pursuant to the Dentist and Dental Hygienist Practice Act, Utah Code Ann. §§ 58-69-101 through 58-60-806, and the Utah Controlled Substances Act, Utah Code Ann. §§ 58-37-1 to 58-37-21.

STATEMENT OF ALLEGATIONS

3. On or about June 3, 2014, a 22-year old male patient, hereinafter referred to as "John Doe" was treated by Respondent at Respondent's dental office, the "Smile Center," located at 10 South 300 East, in Provo, Utah.

4. John Doe's Smile Center medical history questionnaire dated May 8, 2012 indicated that John Doe suffered from asthma.
5. Respondent extracted tooth #2, #15, and #31; placed fillings in tooth #3, #4, #10, #12, #13, #20, #21, and #29; and placed a crown on tooth #19 of John Doe on June 3, 2014.
6. Dr. David A. Gutzman administered Fentanyl, Versed, and Propofol to John Doe during Respondent's treatment of John Doe on June 3, 2014.
7. John Doe was assessed as an ASA level 2 risk classification level on the June 3, 2014 treatment record sheet.
8. John Doe was assessed with a Mallampati score of III, regarding the ease of intubation, on the June 3, 2014 treatment record sheet.
9. It was noted that John Doe weighed 240 pounds and suffered from asthma on the June 3, 2014 treatment record sheet.
10. Dr. Gutzman placed a throat pack at the back of John Doe's throat, consisting of a number of 2 inch by 2 inch pieces of gauze.
11. Neither Respondent nor Dr. Gutzman used gauze with string or tape attached that prevented loss of gauze down the patient's airway.
12. Neither Respondent nor Dr. Gutzman kept a record count of the number of gauze used on John Doe.
13. Toward the end of the procedure John Doe began to cough.
14. The last chronological entry in John Doe's June 3, 2014 treatment record was

entered at approximately 3:50 pm.

15. Respondent and Dr. Gutzman attempted to clear John Doe's airway.

16. Respondent's office called 9-1-1 at approximately 4:19 pm.

17. Dr. Gutzman stated in a written statement to the Division that he attempted a number a measures to clear John Doe's airway, including using an oral airway, an ambu bag, a laryngoscope, Magill forceps, a Laryngeal Mask Airway, and an endotracheal tube.

18. Paramedics arrived at the Smile Center at approximately 4:22 pm.

19. John Doe went into cardiac arrest while being treated by paramedics at Respondent's office.

20. John Doe was transported by ambulance to Utah Valley Regional Medical Center (UVRMC), arriving at approximately 4:42 pm.

21. At UVRMC, Dr. William T. Alward, using a bronchoscope, found, snared, and removed a 2 x 2 piece of gauze located in John Doe's main trachea, which was occluding the main trachea.

22. John Doe was pronounced dead two days later on June 5, 2014.

23. John Doe's death was the result of apnea brain death caused by a foreign body in his trachea obstructing breathing.

24. Dr. Clark Bishop was the certifying physician who reported information about John Doe's death to the Utah State Office of Vital Records and Statistics.

25. John Doe's death certificate described the cause of death as "anoxic brain injury, due to or as a consequence of aspiration of a foreign body due to or as a

consequence of dental procedure."

26. John Doe was weighed and his height was measured by UVRMC personnel. John Doe weighed 280 pounds (128 kilograms). John Doe's height was measured at 173 centimeters.

27. John Doe's body mass index at the time of his death was approximately 42.77, which indicates morbid obesity.

28. Respondent sent a letter to the Division dated June 5, 2014 describing his treatment of John Doe on June 3, 2014. Respondent stated in the letter that "I feel that the procedures performed and efforts to maintain [John Doe's] airway were performed within the standard of care."

29. A review of John Doe's dental records, medical records, and the statements of Respondent and Dr. Gutzman was conducted by a board certified oral and maxillofacial surgeon who provided an expert opinion to the Division stating that Respondent's treatment of John Doe violated the applicable standard of care in the following respects:

(a) Respondent failed to accurately assess the American Society of Anesthesiologists (ASA) risk status level and the Mallampatti score of John Doe. The accurate ASA risk status level and Mallampatti score, considered with John Doe's body mass index, morbid obesity, history of asthma, and the fact that John Doe was at times under general anesthetic, required that John Doe be treated in a hospital setting, and not at Respondent's office.

(b) Respondent failed to place an adequate throat screen to prevent a foreign object from causing an obstruction in John Doe's airway. Respondent should not have used, or permitted Dr. Gutzman to use, 2 x 2 gauze, when a larger gauze, or gauze with strings or tape attached, would not have been as easily aspirated, and would have been easier to find and remove in a timely manner in an emergency.

(c) Respondent failed to account for all of the 2 x 2 pieces of gauze used during the procedure, which led to one piece of 2 x 2 gauze being aspirated and blocking John Doe's airway.

(d) It is highly unusual for the assisting anesthesiologist to place a throat pack. The practitioner performing the dental procedure usually places the throat pack, as the practitioner can directly see and access the patient's airway.

(e) John Doe was placed in deep sedation at times, and was under general anesthesia at times. With John Doe's morbid obesity, Mallampatti score, and history of asthma, John Doe was at an elevated risk of airway obstruction given the level of sedation and anesthesia. Respondent did not adequately assess or prepare for this increased risk, and failed to adequately respond to the emergency situation.

(f) Respondent failed to maintain accurate records of his treatment of John Doe, including actions taken once the emergency situation began.

APPLICABLE LAW

30. Pursuant to Utah Code Ann. § 58-1-401(1), the Division is authorized to "... revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title."

31. Pursuant to Utah Code Ann. § 58-1-401(2), the Division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases:

- (a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title.
- (b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title;

32. Utah Code Ann. § 58-1-501(2)(a), (b), and (g) define “unprofessional conduct” to include:

- (a) violating or aiding and abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;
- (b) violating, or aiding and abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

* * *

- (g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or pattern of incompetency or negligence.

33. Utah Administrative Code R156-69-502(10) defines "unprofessional conduct" to include:

- (10) failing to establish and maintain appropriate dental records;

34. Section 2 of the Code of Ethics of the American Dental Association provides:

Nonmaleficance: (“do no harm”)

The dentist has a duty to refrain from harming the patient.

This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances delegation of patient care to auxiliaries is appropriate.

COUNT I

**VIOLATING A GENERALLY ACCEPTED PROFESSIONAL OR ETHICAL
STANDARD APPLICABLE TO RESPONDENT'S PROFESSION**

35. Paragraphs 1 through 34 are incorporated by reference as though fully stated herein.

36. Respondent violated a generally accepted professional or ethical standard applicable to Respondent's profession, as described in paragraphs 3 through 29 above.

37. Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (b) and Section 2 of the Code of Ethics of the American Dental Association, thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann. § 58-1-401(1) and (2).

COUNT II

**PRACTICING OR ATTEMPTING TO PRACTICE DENTISTRY THROUGH
GROSS INCOMPETENCE, GROSS NEGLIGENCE, OR A PATTERN OF
INCOMPETENCY OR NEGLIGENCE**

38. Paragraphs 1 through 37 are incorporated by reference as though fully stated herein.

39. Respondent practiced or attempted to practice dentistry in the State of Utah through gross incompetence, gross negligence, or a pattern of incompetency or negligence, as described in paragraphs 3 through 29 above.

40. Respondent has therefore engaged in unprofessional conduct as defined in

Utah Code Ann. § 58-1-501(2)(a) and (g), thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann. § 58-1-401(1) and (2).

COUNT III

FAILURE TO ESTABLISH AND MAINTAIN APPROPRIATE DENTAL RECORDS

41. Paragraphs 1 through 40 are incorporated by reference as though fully stated herein.

42. Respondent failed to establish and maintain appropriate dental records, as described in paragraphs 3 through 29 above.


43. Respondent has therefore engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (b) and Utah Administrative Code R156-69-502(10), thus establishing grounds for sanctioning Respondent's license pursuant to Utah Code Ann. § 58-1-401(1) and (2).

WHEREFORE, the Division requests the following relief:

1. That Respondent be adjudged and decreed to have engaged in the acts alleged herein;
2. That by engaging in the above acts, Respondent be adjudged and decreed to have violated the provisions of the Division of Occupational and Professional Licensing Act; the Utah Dental and Dental Hygienist Practice Act; and the Code of Ethics of the American Dental Association; and


3. That Respondent's licenses to practice as a dentist and to administer and prescribe controlled substances in the State of Utah be placed on probation, subject to terms and conditions as recommended by the Board, or any other sanction as recommended by the Board. The sanctions that the Board may recommend include a public reprimand, suspension, revocation, license restriction, and/or imposition of probationary terms and conditions.

DATED this 10th day of February, 2016.

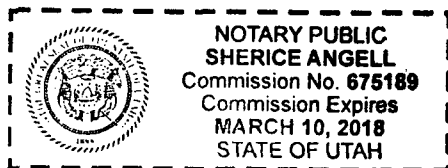

L. MITCHELL JONES
Assistant Attorney General

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, STEVE NEWKIRK, after being duly sworn, depose and state that I have read the foregoing Petition and know the contents thereof, that the same is true to the best of my knowledge except as to matters stated on information and belief and that, as to those matters, I believe them to be true.


STEVE NEWKIRK
Investigator
Division of Occupational &
Professional Licensing

SWORN AND SUBSCRIBED to before me this 10th day of February, 2016.




NOTARY PUBLIC

My Commission Expires:

March 10, 2018